IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7722 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBHAI ARJANBHAI SONSA SON OF DECEASED - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR PS PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3
MR.L.B.DABHI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,2 AND 3
RULE SERVED for Respondent(s) : 2 - 3.
MR VH DESAI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 14/09/2005

ORAL JUDGMENT

This petition is preferred by a former employee of respondent No.4, who worked as peon till he attained age of superannuation on 6/5/2001. He was appointed on

regular post of a peon after following the due procedure of recruitment on 3/9/1968. Ofcourse, prior thereto he worked as a peon but, not as a regularly recruited employee. The petitioner was aggrieved on the count that his services were not regularised and difference in salary from the date of joining was not paid and therefore, he preferred this petition, claiming following reliefs.

> **a**. Be pleased to admit and allow this Special Civil Application;
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> **b**. Be pleased to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ, order of direction, directing the respondents authorities to regularise the services of the petitioner as peon;
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> **c**. Be pleased to direct the respondent No.4 to pay the differences of salary from the date of joining i.e. 01/07/1968 to till today, pending admission, hearing and final disposal of this petition;
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> **d**. Be pleased to direct the respondents to take decision that who will pay the benefits of the retirement and direct them to pay the same within a period which may be fixed by the Honourable Court from the date of retirement of the petitioner;
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> **e**. Be pleased to grant such other and further relief/s as deemed fit, just and proper in the interest of natural justice;
>
> **f**. Be pleased to award the cost of this petition to

the petitioner;

After retirement on 6/5/2001, the petitioner expired on 9/12/2001, and therefore, his heirs and legal representatives have come on record.

2.Learned Advocate Mr.Patel for the petitioner submitted that one Ramilaben wife of Pratapray Joshi, who was also recruited alongwith the petitioner, who expired while in service and, who was not given the benefits of regularisation, etc..., had approached this Court with Special Civil Application No.9411 of 1999 and the said petition was allowed by order dated 3/1/2003 passed by this Court(Coram: Mr.Justice H.K.Rathod, J.). The case of the petitioner therefore, may be given similar treatment.

2.1Mr.Patel submitted that in that case, this Court had also awarded interest @ 10 % on the amount payable and same benefit may also be extended to the present petitioner.

3.Learned Advocate appearing for respondent No.4 does not dispute the fact that case of original petitioner in this petition is similarly situated to the case of

Pratapray Joshi except that Pratapray Joshi expired while in service, whereas the original petitioner herein reached the age of superannuation and expired thereafter. Otherwise, both of them were recruited on 3/9/1968, after following the regular procedure of recruitment and both of them were working as peon. She, however, indicated that no responsibility may be fastened by the Court on respondent No.4 for payment of interest or on any of the respondents, as the deceased petitioner was not considered as employee of the Nagar Palika and therefore, delay was caused.

4. Learned A.G.P., Mr.L.B.Dabhi, represents respondents No.1, 2 and 3. He does not dispute the fact that the case of the present petitioner is similarly situated to the case of Pratapray Joshi.

5. Since the petitioner's services were not regularised and status of permanent employee was not given, it is the case of the petitioner, that no benefit is extended to him.

6. In view of the fact that there is no dispute on the question that the case of the petitioner is similarly

situated to the case of Pratapray Joshi and that the order by a coordinate Bench of this Court passed on 3/11/2003 in Special Civil Application No.9411 of 1999 has attained finality, as the same has not been carried further by way of Letters Patent Appeal, the case of the present petitioner also deserves to be given the same treatment. In Paragraph No.12 of the said judgment. It was observed thus.

> *"12. I have considered the observations made by the Apex Court in above referred to cases and also applying the facts of the above referred cases to the present case, now, it is not in dispute between the parties when page 30 of the petition paper book is made clear by the respondent No.3 that the deceased was considered on employee of Education Committee. He was a permanent employee of the Education Committee. Though initially he was appointed by Staff Selection Committee dated 3.11.1968 which resolution was forwarded to the Mahuva Nagarpalika and thereafter it was sent to the State Government by way of proposal and that proposal was accepted by the State Government in Resolution dated 29.7.1974 and a result of the said resolution is that the deceased was made permanent on the post of Peon working with the Education Committee. He was receiving the GPF benefit at the time when he died at par with Government employees and he was not an employee of Mahuva Nagarpalika and, therefore, as per the Government direction, in*

Government Resolution dated 29.7.1974 the burden or liability of expenses of family pension from the Primary Education Fund of the School Mnadal. Therefore, the contention which has been raised by learned Advocate Ms.Sejal Sutharia that the husband of the petitioner was not an employee of the Education Committee is not accepted by this Court in light of the facts which are on record and admissions made by the administrative officer of the Eduction Committee which are at page 30 as referred above. Therefore, according to my opinion at the time when deceased died he was a permanent employee of respondent No.3 – Education Committee working on the post of Peon and entitled to receive the benefit of pension but, because he died in harness on 9.4.1991 during the course of employment he was not able to get the pensionary benefit, therefore, the widow is entitled the benefit of family pension from respondent No.3 as a matter of legal right. The said benefit has been wrongly denied by all the respondents and according to my opinion all the respondents are responsible for that. Because, ultimately, the Mahuva Nagarpalika is receiving the grant from the State Government. School Mandal having the primary education fund from the Government. If really, lift the corporate veil then it is really a burden of the Government to pay the pensionary benefits to the widow. The administration and internal affairs of the State Government, School Mandal, Education Committee and Mahuva Nagarpalika are not relevant for the widow that who will pay the family pension to the

petitioner. Apparently, the liability has been thrown by each respondent upon next respondent being a technical stand taken by each respondent. Ultimately, the sufferer is the widow who remained without family pension for more than 12 years. The said amount of family pension has been utilised by the respective parties as not paid to the petitioner. Therefore, in both ways, loss to the petitioner of interest amount and to maintain the family in absence of family pension amount. Therefore, considering the averments made in prayer part by the petitioner and also over all submissions made by learned Advocate Ms.Rupal Patel for petitioner, according to my opinion, the petitioner is entitled the interest upon the due amount from the date of death of her husband. Considering the 12 years period from 1991 to 2003 if 10 % interest is awarded it will be meet the ends of justice between the parties. Therefore, the deceased husband of the petitioner was entitled the benefit of pension under the rules from the respondent No.3 – Education Committee. Since the husband of the petitioner died during the course of employment on 9.4.1991 therefore, from that date onwards being considered to be due date, the widow-present petitioner is entitled the benefit of family pension for each month and it is the liability of respondent No.3 to make necessary payments to the petitioner. Before that some exercise is required to be carried out by respondent No.4 under the rules. Therefore, some direction is necessary to respondent Nos.3 and 4 to finalise the amount of family pension which is

due in favour of present petitioner. Considering the averments made in the reply by respondent No.4, the service book of the deceased was not properly maintained which is required to be properly filled up by respondent No.3. Therefore, it is directed to the respondent No.3 to properly fill up the service book from the date of appointment of the deceased till the date of his death and periodical fixation of the salary of deceased and whatever the increments earned by the deceased during the course of his employment same must have to be given effect to any pay revision in between is also equally required to be given effect to in the salary of deceased and respondent No.3 shall have to submit the service book after properly filling up the service book of the deceased to respondent No.4 within a period of one month from the date of receiving the copy of of this order. It is made clear that if the service book is already sent by respondent No.3 to respondent No.2 then respondent No.3 shall have to recall the same from the respondent No.2 and to submit to respondent No.4 within a period of one month. No further delay is permissible to the respondent No.3 on that account. It is further directed to respondent No.4 that after receiving the service book and all necessary papers from the respondent No.3 to scrutinize and verify the case of the petitioner for pay fixation of the deceased up to the date of his death and on that basis to fix the monthly family pension of the petitioner and pass necessary orders to that effect from the date of death of husband of petitioner

within a period of one month from the date of receiving the copy of necessary papers and service book of the deceased. It is further directed to the respondent No.4 to communicate the said decision to the respondent No.3 immediately without any delay. It is further directed to the respondent No.3 to make necessary payments of due amount of family pension from due date 9.4.1991 till 30.10.2003 with 10% periodical running interest upon the said amount to the petitioner – widow within a period of three months from the date of receiving the copy of this order. Thereafter it is further directed to the respondent No.3 to pay monthly family pension amount to the petitioner widow which will be due on 30.11.2003 in December, 2003 on or before 15.12.2003 and further directed to pay regularly family pension to the petitioner widow till she is entitled according to law. Accordingly present petition is fully allowed. Rule is made absolute with Rs.10,000 cost awarded against the respondent No.3. However, it is made clear by this Court that amount of family pension as directed by this Court must have to be paid by respondent No.3 but, it is open for the respondent No.3 to request the responsible authority or respondents for necessary payments as per Government Resolution dated 29.7.1974 but, that being internal arrangement between them, for which, respondent No.3 should not have to wait for making necessary payment to the petitioner widow as per direction issued by this Court in the present order."

7. The petitioner's case being similar, will have to be given same treatment. No reasons are indicated to this Court to take a different view. The benefit of regularisation of service of the petitioner and difference in salary from 1/7/1968 to the date of retirement of the petitioner, therefore, is ordered to be given to the petitioner. The said difference shall be paid by respondent No.4, as early as possible, preferably within a period of 8 weeks from to-day.

8. It would be appropriate to observe that prayers made in Para 20 (D) were premature for the petitioner to have made, as he was in service at that point of time. However, it is expected of respondent authorities to process the case of the deceased employee – Arjanbhai Chintharbhai Sonsa for pension and / or the case of Nanduben Arjanbhai Sonsa – widow of the deceased for family pension, if eligible, at the earliest. Rule made absolute accordingly. No order as to costs.

(A.L.DAVE, J.)

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